

**THE CHILDREN WE ABANDON:  
RELIGIOUS EXEMPTIONS AND THE CONSTITUTION**

(An address delivered to the Freedom from Religion Foundation 38<sup>th</sup> annual conference  
by CHILD President, Rita Swan, on October 10, 2015 in Madison, Wisconsin.)

Thank you for inviting me to speak to FFRF again. You've done so much for good and done it well. It's heartwarming to see how you've grown.

As you know, my husband and I were devout, lifelong Christian Scientists until 1977 when we lost our only son Matthew to a treatable illness because of following the church's beliefs against medical care. We left the church right after his death and have become nationally prominent advocates for protecting children from abuse and neglect related to religious beliefs and other strongly-held belief systems. Thirty-eight years and scores of national media appearances later we remain the only people willing to speak publicly about the loss of their child because of Christian Science beliefs.

Before internet it took us years to figure out that states had identically worded religious exemptions from child neglect charges, which appeared to give parents the legal right to deprive a sick child of medical care on religious grounds.

And then we learned that in 1975 the federal government had begun requiring states in the grant program to enact religious exemptions from neglect. If states wanted federal money for their child protection programs, they had to enact a religious exemption from child neglect.

We fought this federal policy with over fifty letters to Congress and the administration. We also went to Washington three times for meetings. The feds admitted to us that the Christian Science church was the only party that asked for this remarkable policy.

In January, 1983, the federal government rescinded the policy but they did not require the states to repeal their laws. By 1983 every state except Nebraska had a religious exemption to neglect either in the civil or criminal code or both.

The U.S. Department of Health and Human Services (HHS) did initially try to require the states to reduce the scope of the civil exemptions so that they did not prevent investigation or court orders, but even that was soon quashed by the Christian Science church.

The Louisiana legislature passed a resolution condemning HHS and claiming that faith healing was twice as effective as medical care in healing diseases of children. When HHS withheld federal money to force change in California, the state sued HHS rather than lifting a finger to change the laws. Congress passed a temporary moratorium that stopped HHS from requiring any changes in neglect laws and then in 1994 Congress passed this incredible law: *“There is no federal requirement that a parent or guardian provide a child any medical service or treatment against the religious beliefs of the parent or guardian.”*

Actually, that’s a masterpiece of political doublespeak because there’s no federal requirement that parents do anything for children. Child abuse and neglect laws are state laws and the federal government influences state laws only by the power of funding. But HHS has not raised any concerns about religious exemptions since the federal law was passed in 1994.

So we have been left with the herculean task of repealing religious exemptions state by state. When we first began we thought we’d get all the religious exemptions repealed and then work on other good social justice causes. But as this frustrating and laborious work has dragged on over the decades, we have reduced our expectations. For the last several years we have placed highest priority on repealing religious defenses to negligent homicide and manslaughter

and even that looks like it will take a great many years. There are eight states that have religious defenses to negligent homicide or manslaughter.

Washington State, which is reputed to be the most secular state in the nation, has this religious defense to felony child endangerment and 2<sup>nd</sup>-degree murder:

*“It is the intent of the legislature that a person who, in good faith, is furnished Christian Science treatment by a duly accredited Christian Science practitioner in lieu of medical care is not considered deprived of medically necessary health care or abandoned.”*

*Revised Code of Washington §9A.42.005 [enacted in 1997]*

Let me back up for a minute and explain what Christian Science treatment is. Founder Mary Baker Eddy envisioned her religion as a health care system. She called her faith healers “practitioners,” their prayers “treatments,” and those they pray for their “patients.” The practitioners send bills for these treatments, and the church is constantly trying to get reimbursement for these bills from third-party payers. The church also has other workers called “nurses,” who are not state licensed, have no medical training, and do not work under supervision of state-licensed personnel. These nurses cannot take a pulse or use a fever thermometer. They will not do even simple non-medical procedures to relieve suffering or discomfort, such as using heat or ice on a painful area.

So with no discussion the Washington legislature enacted this law saying that a child sick with any disease whatsoever is not deprived of health care if a Christian Science practitioner is praying for him. Washington has declared that prayers by one religion are medically necessary health care for a child with type 1 diabetes or bacterial meningitis or cancer.

We have been comically underfunded for lobbying around the country and in many cases amateurish.

Our most frustrating work was in our home state of Iowa where we lived for 29 years. We lived where the Missouri River meets the Big Sioux, where South Dakota, Nebraska, and Iowa come together. In South Dakota we got five religious exemptions repealed.

But Iowa was just impossible. Though Iowa had a religious defense to manslaughter and felony child endangerment, we could not persuade the majority of legislators there was anything wrong with that.

One year I made nine trips down to Des Moines to lobby for repeal. We were greatly handicapped by living 200 miles from the capital and being a one-car family. On Sundays I would ride down to Des Moines with a state legislator, trudge up and down the hill to the capital in snow and bitter cold, and on Thursday catch an all-night bus back to Sioux City with several-hour layover in Omaha. My husband would meet me at 6 a.m. with a pillow and I would sleep in the car until he could take me home.

It WAS hard for the legislators to understand our position. Why did I want to make criminals of parents who had done what I did? And most legislators prefer to avoid work if they can. “Your son didn’t die in Iowa, did he?,” one asked. One could rephrase that—“We don’t have bacteria in Iowa, do we?” “Your experience is unlikely to happen in Iowa,” another said.

While Iowa had several outbreaks of vaccine-preventable disease because of religious exemptions, we knew of only two deaths in Iowa faith-healing sects. Both were newborns. One died of a cerebral hemorrhage probably preventable with a Vitamin K shot; the other died of Rh factor incompatibility preventable with the rhogam shot. The bereaved grandparents were CHLD members and I persuaded them to go public.

Even they could not persuade enough legislators to get a bill passed. With abortion rights, Iowa parents have no duty to a baby until it takes a breath. There

is nothing illegal about home births. The deaths of these infants shortly after birth were not dramatic enough to motivate legislators.

It was very emotionally painful for me to carry around the story of our son's death and have legislators be indifferent, evasive, and promise breakers. And more than anything else I regretted putting the grandparents through the ordeal of going public. It was very hard on them. It wrecked their relationships with their children and grandchildren in the faith-healing sect. One son and his wife hid their next pregnancy and birth from the grandparents, preventing them from intervening to save the baby if there had been a health emergency.

But there was always Nebraska to lift my morale. Just across the Missouri River was the one state that had never had a religious exemption from medical care of sick and injured children. (Nebraska's only religious exemption relevant to children is from immunizations.)

As many of you already know, the reason Nebraska is the shining star on this issue is Senator Ernie Chambers. He is a predictable, consistent, tenacious opponent of religious exemptions. He filibusters for hours and threatens filibusters. During the eight years when the federal government coerced states through the power of funding to enact a religious exemption to child neglect, Ernie managed to stall the state legislature and administration until the feds abandoned their policy.

And Ernie has brought the Nebraska administration in a conservative state along with him. The Health Department strongly supports requiring preventive and diagnostic measures for all newborns without exception for religious belief. Thanks again to Ernie, Nebraska is one of only four states to require metabolic testing of all newborns without religious exemption, and the only state in the country to have an enforcement mechanism. The other three states, Montana, West

Virginia, and South Dakota, have laws requiring the test for all newborns but no penalty for breaking the law.

Religious objectors have sued Nebraska in state and federal courts. One family had religious beliefs against withdrawing any blood from the body. Church of Scientology parents believed in what they called “silent birth.” The baby should not be exposed to any discomfort, noise, language, or other strong sensory data for at least ten days because those will get recorded in what Scientologists call the reptilian brain. The individual will have strong fear and tension when he encounters those words or other triggers throughout the rest of his life. Scientology founder L Ron Hubbard claims silent birth is necessary to save the quote “sanity” of mother and baby.

So the Scientology parents were willing to have the blood drawn for metabolic testing after the baby was ten days old and every other state would have thought that was fine. Not Nebraska. The optimal time to do the test is before the baby is 48 hours old, that was Nebraska’s law and the Nebraska Attorney General did not hesitate to defend its law in federal court.

Both the Nebraska Supreme Court and the federal court have upheld Nebraska’s law.

After losing in the courts, the religious objectors went to the legislature. Our handful of Nebraska CHILD members and I made trips to Lincoln to testify against their bills creating a religious exemption to metabolic screening. Nebraska has a one-chamber legislature and sometimes bills can move pretty fast. Once an exemption bill had passed committees and was scheduled for final vote on the floor of the Unicameral. I called Ernie Chambers—fortunately he still had not been term limited out of the legislature. Within a few hours his staff called back and said not to worry—it’s been taken care of. The next day Ernie threatened a filibuster and the bill was withdrawn.

To answer the question of why we want the criminal code to prohibit medical neglect by devotees or faith, we don't regard our work to repeal religious exemptions as intrinsically punitive. To us it's a simple matter that parents have got to have a duty to provide a child with the necessities of life, and the only way society can establish a duty in law is to provide a penalty for not performing a duty. That's true for everything from running a red light to murder. Few of us would put money in the parking meter if there weren't a penalty. The ultimate purpose of the criminal code is deterrence and it is our hope that clear laws which apply to everybody will change behavior.

Though it would seem madness to you, many parents in the faith-healing sects do not comprehend the risk they are taking with their child's life when there is a state law allowing them to withhold medical care from a child. They perceive exclusive reliance on religious ritual to be not only legal but safe when the state endorses their behavior. The Christian Science church in particular has told its members that legislators give them religious exemptions because legislators agree that Christian Science heals disease just as well as medical science does.

The power of the law to change religiously-motivated behavior is most dramatically illustrated by our work in Oregon. In Clackamas County, Oregon, there is a group called the Followers of Christ opposed to medical care. Year after year they buried children; the county coroner did not refer the deaths to law enforcement and barely even examined the children. Later they got a state medical examiner system. The medical examiner established a professional system and methodically he and his staff did forensic autopsies on the children that would stand up in court. He always took their findings to the district attorney, but the district attorney did nothing with them citing religious freedom and the laws the Christian Science church was getting passed.

By 1997 the church had gotten religious defenses in Oregon to homicide by abuse or neglect, manslaughter, criminal mistreatment of dependents, criminal nonsupport, neglect, and failure to provide necessities.

In 1998 I spoke at a national conference about Oregon laws. A new district attorney came running up saying she wanted to do something about the faith deaths in Clackamas County. In a seven-month period three Followers of Christ children had died of readily treatable illnesses, sepsis from a strangulated hernia, and diabetes. The district attorney concluded she could not file any charges, but she did alert the press.

The media went to the Followers of Christ cemetery and found 78 children buried there. The public was outraged. One of our Oregon CHILD members asked his legislator to sponsor a repeal bill. In 1999 the legislator introduced a bill to repeal all nine religious exemptions pertaining to medical care of sick and injured children.

The Christian Science church fought us tooth and nail for seven months. Some 75 amendments were proposed. We finally got a bill passed that repealed five of the nine.

We hoped that would be enough to change the Followers' behavior and for several years it seemed that it had. But in 2008 the deaths started up again.

We decided to try to get the remaining four exemptions repealed. We asked the state legislator again; he agreed to sponsor the bill. Because it had been such an exhausting fight in 1999, we decided to move to Salem to help him. When the Christian Science church found that we were living in Salem, the church gave up and said they would not oppose our bill because the deaths in Oregon had reached quote "a critical mass." 78 dead children were not a critical mass, but 82 were.

Our bill sailed through almost unanimously, and there has not been a Followers of Christ child die of medical neglect since 2009—not even in one of



their unattended home deliveries. Oregon is one of six states with no religious exemptions pertaining to medical care of sick or injured children.

The most urgent need for legislative reform now is Idaho, which has four or more Followers of Christ congregations. State law allows parents to withhold lifesaving medical care from children, so criminal charges are never filed. One coroner doesn't even do autopsies on the Followers' children because Idaho law requires autopsies only when a crime is suspected. Some families have reportedly moved from Oregon to Idaho since Oregon eliminated its exemptions.

In the Peaceful Valley Cemetery used and owned by the Followers of Christ 35% of the graves are of minor children or stillbirths. Statewide only 3% of Idaho deaths are of minor children or stillbirths.

Though the deaths go back as far as 1924, 149 of the 206 graves of minors occurred after Idaho enacted religious defenses to criminal injury and manslaughter. This death sentence for so many was passed by the legislature with no discussion.

We are working hard for repeal in Idaho but to date we haven't gotten even a committee hearing.

Turning to another subject, we want to thank the Freedom from Religion Foundation for co-signing our petition to the Internal Revenue Service asking that they stop recognizing bills for rituals and prayer as a deductible medical expense. Since 1943 the IRS has allowed bills Christian Science practitioners send for their prayers to be deducted from income tax as a medical expense. The amount of money at issue is surely minuscule, but the policy has been used to bolster lobbying for religious exemptions from child neglect laws. Two states even have laws explicitly allowing those whose prayers are deductible medical expenses to deprive their children of medical care. We hope to have something from the IRS about this early next year.

And finally we would be grateful for your writing your federal legislators in opposition to bills that give religious objectors an exemption from purchasing health insurance. The House bill, HR2061, recently passed the House by voice vote. It and the companion Senate bill, S.352 are now in the Senate Finance Committee. The Congressional Budget Office estimates these bills will cost the government \$1.235 billion over ten years. The more people are exempted out of insurance pools, the more premiums will go up for the rest of us. And we believe that at least some of those children in Idaho would have gotten medical care if their parents had been required to buy health insurance for them.